

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

**FILED**

SEP 11 2019

Clerk, U.S. District Court  
District Of Montana  
Missoula

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHILIP MICHAEL FRISCIA,

Defendant.

CR 16-29-M-DWM

FINDINGS AND  
RECOMMENDATION

Before the Court is a petition alleging Defendant Philip Michael Friscia violated the conditions of his supervised release. (Doc. 115). On August 21, 2019, United States District Judge Donald W. Molloy referred this matter to the undersigned to conduct the revocation hearing and submit proposed findings of fact and recommendations for such revocation, including a recommended disposition under 18 U.S.C. § 3583(e). (Doc. 117).

The petition to revoke alleges that Defendant violated the mandatory condition of his release that he refrain from any unlawful use of a controlled substance. Specifically, the petition alleges that on July 29, 2019, the Defendant was given a random urinalysis test and tested positive for methamphetamine. The petition further alleges that Defendant's urine sample was sent to Alere Toxicology, and on August 5, 2019, it was confirmed positive for

methamphetamine. (Doc. 115, at 2).

At the August 29, 2019, hearing on the petition to revoke, the Court advised Defendant of his rights with respect to the petition, and he waived his right to a preliminary hearing. Defendant admitted to the alleged violation as set forth in the petition. Based on Defendant's admission, the Court found by a preponderance of the evidence that Defendant violated the mandatory condition of his supervised release as alleged in the petition.

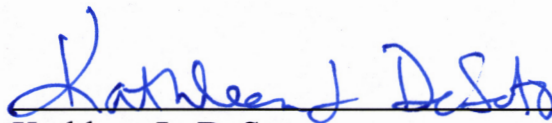
The Court then set the dispositional hearing for September 4, 2019. Defendant failed to appear at the dispositional hearing as directed, however, and the Court issued an arrest warrant. Defendant was arrested on September 5, 2019, and appeared in front of U.S. Magistrate Judge John Johnston for an initial appearance the following day. Defendant was subsequently transported to Missoula and appeared before the undersigned on September 10, 2019 for the dispositional hearing on the petition to revoke.

At the hearing, the United States, defense counsel, and Defendant were each given an opportunity to address the Court as to their recommendations and requests for an appropriate sentence and disposition of the petition. Having considered the record in this case, and the information and arguments presented at the hearing,

IT IS RECOMMENDED that Defendant's supervised release be REVOKED. The Court further recommends that Defendant be committed to the custody of the United States Bureau of Prisons for a term of 12 months, with 10 months of supervised release following his term of imprisonment.

Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to these Findings and Recommendations within 14 days of the date it is served as indicated on the Notice of Electronic Filing. Presiding United States District Judge Molloy will make a de novo determination regarding any portion of the Findings and Recommendations to which objection is made, and may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by Judge Molloy and may waive the right to appear and allocute before Judge Molloy.

DATED this 11<sup>th</sup> day of September, 2019.

  
Kathleen L. DeSoto  
United States Magistrate Judge